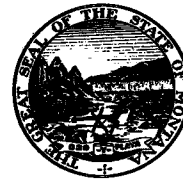




Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

Memorandum

EXHIBIT 1
DATE 2.7.07
HB 469

TO: Representative Lake

FROM: Gene Walborn
Business and Income Taxes Division Administrator

DATE: February 6, 2007

SUBJECT: Response to Representative Cohenour's Questions Regarding HB469

I have attached some information regarding centrally assessed properties. The attachments include:

- 1 – Summary of the recent Omimex Canada District Court decision.
- 2 – Exert from the DOR's Post-Trial Memoranda filed in Omimex Canada Case which discusses the difference between the terms "central assessment" and "unit valuation".
- 3 – A portion of the Rash & Associates' presentation on a telecommunication survey on how states assess the different segments of the telecommunication industry. This was presented at the 2005 Appraisal of Ad Valorem Taxation of Communications, Energy and Transportation - Wichita Conference. The survey indicates that out of the 26 responding states 16 (61%) centrally assess wireless companies. This survey was conducted prior to the Montana Legislative Audit Division's October 2006 Financial-Compliance Audit findings.
- 4 – Survey of western states on the assessment practices of cellular companies.

I hope this information has been helpful in addressing your questions. If you should have additional questions please feel free to contact me at 444-0908 or gwalborn@mt.gov.

Omimex Canada v. State of Montana Dep't of Revenue, Cause No. BDV-2004-288, First Judicial District, Lewis & Clark County, February 2, 2007.

Judge Sherlock has upheld the Department's interpretation that it's centrally assessed statute, § 15-23-101, MCA, does not have a "physical connection" requirement. In agreeing with the Department, Judge Sherlock stated that "[t]he Court does not feel a physical connection between the various properties is necessary. . . the statute does not require such a physical connection." The Court went on to note that "the statute has examples of centrally assessed properties that are not physically connected, such as railroad car companies, airlines and microwave companies." The Court also found particularly persuasive the recent State Tax Appeal Board (Board) case of **PPL Montana, LLC v. Mont. Dep't of Revenue**, where the Board found PPLM to be properly centrally assessed despite the lack of a physical connection between the PPLM properties. The Department argued, and the Board (and now the Court) agreed that central assessment is not limited to properties that are physically connected.

In dismissing the "physical requirement" argument, the Court focused on whether Omimex's properties are **operated** as a single and continuous property in more than one county. This is really a question of how a particular company operates its property. In the **Omimex** case, the Court was asked, and answered in the affirmative, the question of whether Omimex operates its properties as an integrated, economic business unit. This rationale relied on by the Board in the **PPLM** case and by Judge Sherlock in the **Omimex** case is supported by Montana and United States Supreme Court precedent.

At issue before the Court was property taxes paid by Omimex for the 2004 tax year. The amount protested for the 2004 tax year is \$653,286.

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**MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTY**

OMIMEX CANADA, LTD., Plaintiff, vs. STATE OF MONTANA, DEPARTMENT OF REVENUE, Defendant.	Cause No: BDV-2004-288 MONTANA DEPARTMENT OF REVENUE'S POST-TRIAL MEMORANDA
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Based on the testimony and exhibits presented to the Court on September 18 through September 20, 2006, the Montana Department of Revenue ("Department") supplements, and incorporates by reference, its Pre-Trial Memoranda with the following:

I. THE DEPARTMENT HAS A DUTY TO APPRAISE PROPERTY AT 100% OF ITS MARKET VALUE.

The Department is required to appraise property at its market value. *§ 15-8-111, MCA.* Market value is the price that a willing buyer and a willing seller would reach, neither being under any compulsion to buy or sell. *§ 15-8-111, MCA; Walborn Tr.* p. 221-3. The Department uses the cost, income and market approaches to value to arrive at the market value of a property. *Albright v. State* (1997), 281 Mont. 213, 933 P.2d 815.

II. THE DEPARTMENT APPRAISED OMIMEX'S PROPERTIES USING THE UNIT METHOD OF VALUATION.

✓ (While the terms "central assessment" and "unit valuation" are often used interchangeably, technically "central assessment" relates to appraisals done at the Department's Helena office, while "unit valuation" is the actual appraisal methodology used to appraise properties that are centrally assessed. Unit valuation focuses on capturing the business value in order to ensure that an appraiser arrives at the true market value of certain kinds of property identified by the Legislature in § 15-23-101, MCA. The Department is required to appraise property at 100% of its market value, and for certain kinds of property the unit method of valuation is the only way the Department can meet this responsibility. Unit valuation is a business concept, not a physical concept, meaning that when a corporation has an integrated property, the focus of valuation switches to the business and away from individual component pieces and items of property. Requiring a physical connection is antithetical to and negates the legislative purpose of valuing an integrated business as a whole instead of in parts.)

The unit valuation (central assessment) method is a commonly accepted appraisal methodology. Its validity has been repeatedly recognized by the Montana and United States Supreme Courts. See e.g., *Department of Revenue v. Soo Lines*, 172 Mont. 1, 5, 560 P.2d 512, 514 (1977) (stating that "[t]he use of the three-factor, unitary method of assessment of the local property of an interstate corporation is hardly novel in this jurisdiction. This method has been approved by this court repeatedly and as recently as December 29, 1976"); *Western Air Lines, Inc. v. Michunovich*, 149 Mont. 347, 350, 428 P.2d 3, 5 (1967) (opining that "[t]he [Department] used the 'unitary' or 'going concern' approach, as distinguished from a direct ad valorem assessment. . . . The underlying philosophy of the 'unitary' method is that the property so used forms a part of an organic system and may be assessed in terms of the economic contribution which each component makes to the entire system. This approach has been firmly established in a series of decisions of the Supreme Court of the United States."); *Yellowstone Pipe Line Co. v. State Bd. of Equalization*, 138 Mont. 603, 611, 358 P.2d 55, 60 (1960) (concluding that "the proper way to find the true cash value of any part of this property requires that the system as a unit be valued"); *Western Union Telegraph v. State Board of Equalization*, 91 Mont. 310, 7 P.2d 551 (1932) (holding that "unity of tangible property such as will support unit method of assessment does not depend on the physical connections of the property"); *Adams Express* has a transportation



RASH & ASSOCIATES

Property Tax Management

Wichita - 2005

Assessment Jurisdiction

➤ Jurisdiction Synopsis

- 16 of 26 respondents centrally assess Wireless Companies
- 3 of 26 respondents centrally assess ISPs
- 6 of 26 respondents centrally assess VoIP Companies
- 3 of 26 respondents centrally assess Cable TV companies
- No states reported centrally assessing Direct Broadcasting Companies
- 5 respondents reported centrally assessing tower aggregators/companies (KY, NM, OR, TN, WI)

Assessment Jurisdiction

WLS = Cell Phones

	LEC	CLEC	LD	Fiber	*WLS	ISP	VoIP	CATV	DBS
AL	S	S	S	S	L	L	L	L	L
AZ	S	S	S	S	S	L	L	L	L
AR	S	S	S	S	S ¹	L		S ¹	L
CA	S	S	S	N/A	S	N/A	N/A	L	L
CO	S	S	S	S ²	S	L	S	L	L
GA	S	S	S	S	L	L	L	L	L
IN	S	S	S	L	S	L	L	L	L



RASH & ASSOCIATES

Property Tax Management

Wichita - 2005

Assessment Jurisdiction

	LEC	CLEC	LD	Fiber	WLS	ISP	VoIP	CATV	DBS
KS	S	S	S	S	L	L		L	L
KY	S	S	S	S	S	L		S	L
LA	S	S	S	S	L	L	L	L	L
MI	S	S	S	S	L	S	S	L	L
MS	S ³	S ³	S ³	L	L	L	L	L	L
MO	S	S	S	S ⁴	L	L	L	L	L
MT	S	S	S	S	L	None ⁵	None ⁵	S	L



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Property Tax Management

Wichita - 2005

Assessment Jurisdiction

	LEC	CLEC	LD	Fiber	WLS	ISP	VoIP	CATV	DBS
NE	S	S	S	S	S	L	S ⁶	L	L
NM	S	S	S	S	S	S	S	L	L
NC	S	S	S	L	L	L	L	L	L
ND	S	S	S	S	S	None ⁷	None ⁷	L	L
OK	S	S	S	S	S			L	L
OR	S	S	S	S	S	L	L	L	L



RASH & ASSOCIATES

Property Tax Management

Wichita - 2005

Assessment Jurisdiction

	ILEC	CLEC	LD	Fiber	WLS	ISP	VoIP	CATV	DBS
TN	S	S	S	S	S	L	S	L	L
TX	L	L	L	L	L	L	L	L	L
WA	S	S	S	S	S	S	S	L	L
WV	S	S	S	S	S	L	L	L	L
WI	S	S	S	S	S	L	L	L	L
WY	S	S	S	S	S	L	L	L	L

Assessment Jurisdiction

→ Jurisdiction Notes:

- ¹Definition interpreted in Southwestern Bell Mobile System v. Arkansas Public Service Commission, 73 Ark. App. 222, 40 S.W.3d. 838 (2001). Cable TV companies assessed via ACA 26-26-1801. (AR)
- ²Fiber companies are state assessed if they provide long distance service. (CO)
- ³LECs, CLECs, and LDs are state assessed if the company owns property in more than six Mississippi Counties. All others are locally assessed. (MS)
- ⁴Fiber Companies are state assessed if they own their own fiber and traverse more than one county. (MO)
- ⁵ISPs and VoIP Companies are not subject to property tax. (MT)
- ⁶VoIP Companies state assessed beginning in 2005. (NE)
- ⁷ISPs and VoIP Companies are not subject to property tax. (ND)

WESTERN STATES' ASSESSMENT OF CELLULAR COMPANIES

CENTRAL ASSESSMENT

ALASKA	NA ¹
ARIZONA	YES
CALIFORNIA	YES
COLORADO	YES
HAWAII	NA ³
IDAHO	NO
NEVADA	NO
NEW MEXICO	YES
OREGON	YES
TEXAS	NA ²
UTAH	YES
WASHINGTON	YES
WYOMING	YES

NA¹ - The only property taxed in Alaska is the Alyeska Pipeline.

NA² - Texas is not a central assessment state.

NA³ - Personal property is exempt from taxation in Hawaii